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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

HELLS CANYON PRESERVATION
COUNCIL and OREGON NATURAL
DESERT ASSOCIATION,

Plaintiffs,

v.

Civil Action No. 3:11-cv-00023-PK

**PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES AND
COSTS**

KENT CONNAUGHTON, Regional Forester,
Region 6, and U.S. FOREST SERVICE,

Defendants,

PAT and ANNA SULLIVAN, et. al.

Defendant- Intervenors.

Plaintiffs Hells Canyon Preservation Council and Oregon Natural Desert Association respectfully move this Court for an award of reasonable attorneys' fees and litigation expenses that they have incurred to date in their successful prosecution of this matter against the U.S. Forest Service.

The Court is authorized to award Plaintiffs their reasonable attorneys' fees and litigation expenses against Defendant U.S. Forest Service in this case pursuant to the Equal Access to Justice Act (EAJA), which provides:

Except as otherwise specifically provided by statute, a court shall award to the prevailing party other than the United States fees and other expenses . . . incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.

28 U.S.C. § 2412(d)(1)(A).

Plaintiffs are entitled to recovery of reasonable attorneys' fees and litigation expenses incurred in this matter under EAJA because Plaintiffs are eligible parties as defined under EAJA; they are the prevailing parties in this litigation, including by having the Court issue an Order adopting most of the Findings and Recommendation of Judge Papak and granting summary judgment in Plaintiffs' favor as to twelve of the sixteen challenged agency decisions; there are no special circumstances that would make an award unjust; and Defendants' position was not substantially justified.

Pursuant to EAJA, Plaintiffs request an award of attorneys' fees and litigation costs incurred to date in their successful prosecution of this litigation, based on the "lodestar" approach for fees (i.e., the reasonable time expended by their counsel at the reasonable market rates) and based on the actual litigation expenses incurred.

Ms. Schwartz seeks hourly rates of between \$200 and \$235 for the years 2010-2013, Ms. Rule seeks hourly rates of between \$240 and \$350 for the years 2007-2013, Mr. Lacy seeks hourly rates of between \$200 and \$350 for the years 2005-2013 and Mr. Becker seeks hourly rates of between \$325 and \$365 for the years 2010-2013. Litigation expenses consist of the filing fee, expert declarant fee, postage, mileage for site visits, court parking, and copying/printing costs. The total fees sought by each of Plaintiffs' counsel is set forth below (see also Exhibit 1, attached hereto):

Attorney Fees and Costs

Jennifer Schwartz: \$161,733.00
 Lauren Rule: \$19059.50
 David Becker: \$5292.50
 Peter Lacy: \$3923.00
 Litigation Expenses: \$2070.94
 Total fees and expenses: \$192,078.94¹

Plaintiffs and Defendants are currently negotiating in good faith to attempt to settle the issue of attorney fees and litigation expenses. However, to insure the timely filing of this motion, Plaintiffs file it now and will provide further briefing, declarations, timesheets and other documents in support of this motion at a later time if negotiations fail. Specifically, Plaintiffs are filing the accompanying motion to stay the briefing on this matter until July 15, 2013 in order to try to reach settlement and avoid litigating this

¹ If settlement negotiations are unsuccessful to resolve this fee claim, Plaintiffs reserve the right to seek additional fees to cover further time and costs for litigating this issue.

matter. *See* Plaintiffs' Unopposed Motion to Stay Motion for Attorneys' Fees and Costs (filed concurrently).

WHEREFORE, Plaintiffs respectfully pray that the Court grant this motion; and award them attorneys' fees and litigation expenses in the amount of \$192,078.94 for the fees and expenses they have reasonably incurred to date in this action.

DATED this 4th day of June, 2013

Respectfully Submitted,

/s/ Jennifer Schwartz
Jennifer R. Schwartz, OSB #072978

Of Attorneys for Plaintiffs